

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

DANIEL A. BERNATH, an individual,

Plaintiff,

v.

YELP, INC., a Delaware corporation,

Defendant.

Case No. 3:13-cv-1796-AC

**OPINION AND ORDER ADOPTING
FINDINGS AND RECOMMENDATION**

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued two Findings and Recommendation in this case on December 17, 2013 and January 23, 2014. Dkts. 33 and 36. Judge Acosta recommended that (1) Daniel A. Bernath’s (“Bernath”) motion to dismiss (Dkt. 20) should be construed as a notice of voluntary dismissal under Federal Rule of Civil Procedure (“Rule”) 41, the case should be terminated on that notice, and Yelp Inc.’s (“Yelp”) motion to strike the complaint or alternatively dismiss the complaint (Dkt. 9) should be denied as moot (Dkt. 33); and (2) Bernath’s motion for Rule 11 sanctions (Dkt. 27) should be denied (Dkt. 36). No party has filed objections.

Under the Federal Magistrates Act (“Act”), the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report[.]"); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise").

Although review is not required in the absence of objections, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Acosta's Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Acosta's Findings and Recommendation (Dkts. 33 and 36). Bernath's motion to dismiss (Dkt. 20) is construed as a notice of voluntary dismissal under Rule 41 and is **GRANTED** and the case is terminated on that notice. Yelp's motion to strike the complaint or alternatively dismiss the complaint (Dkt. 9) is **DENIED AS MOOT**. Bernath's motion for Rule 11 sanctions (Dkt. 27) is **DENIED**.

IT IS SO ORDERED.

DATED this 24th day of March, 2014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge